



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: NOVEMBER 30, 2022

IN THE MATTER OF:

Appeal Board No. 624887

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective beginning March 23, 2020 through November 29, 2020, on the basis that the claimant did not comply with registration requirements. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed July 12, 2022 (A.L.J. Case No. ), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and other evidence are needed before deciding whether the claimant called the Department of Labor in April 2020 to inquire about applying for unemployment benefits. Our review of the record indicates that the claimant may have misunderstood the instruction on the hearing notice for her to produce telephone records, to mean that she was to produce recordings of the calls she made. Since the issue of whether the claimant called the Department of Labor in early April 2020 is central to assessing credibility, and determining whether the claimant was given misinformation by a Department of Labor representative at that time, the claimant shall be given a further opportunity to produce the relevant telephone records.

Specifically, the claimant is directed to produce telephone records (not recordings of calls) to establish whether she made a call or calls to the

Department of Labor between April 1, 2020 and November 29, 2020. Since the claimant testified that she placed the call to the Department of Labor using her cellphone, the records may include include, but not be limited to, a record of itemized calls the claimant made from the phone she used, as provided to her by her cellphone provider.

In the event the claimant is not able to get access to these records from her provider after making a good faith attempt to do so, the claimant is directed to contact the Hearing Section to request that a subpoena be issued for the production of the relevant telephone records.

The claimant is placed on notice that failure to produce the telephone records as directed may result in the hearing Judge or the Board taking an adverse inference against her, and concluding that the records not produced would not support the claimant's position.

The hearing Judge may receive into the record any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of ineligibility on the basis of failure to register, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the initial determination holding the claimant ineligible to receive benefits, effective beginning March 23, 2020 through November 29, 2020, on the basis that the claimant did not comply with registration requirements, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain

appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER